

### Judge Robb, cont.

Foundation and a Senior Distinguished Fellow of the Indianapolis Bar Foundation. She is a frequent speaker on legal topics for attorneys, other judges, and professional, civic and community organizations.

Judge Robb was Founding Chair of Governor Bowen's Commission on the Status of Women; was a recipient of a 1993 Indiana State Bar Association's "Celebrating 100 Years of Women in the Legal Profession" award; the 2001 Maynard K. Hine distinguished alumni award given in recognition of support and service to IUPUI and Indiana University; the 2004 Bernadette Perham "Indiana Women of Achievement" Award, bestowed by Ball State University to honor of one of their outstanding professors; the 2005 Indiana State Bar Association's Women in the Law Recognition Award; the 2006 Tippecanoe County YWCA Salute to Women "Women of Distinction" Award; the 2007 Warren G. Harding High School, Warren, Ohio, Distinguished Alumni Award; the 2010 Indiana University Alumni Association President's Award, a 2010 Indiana Lawyer Distinguished Barrister Award, the 2011 Indianapolis Bar Association Women and the Law Committee's Antoinette Dakin Leach Award and the 2011 David Hamacher Award from the Appellate Practice Section of the Indiana State Bar Association.

Judge Robb chairs the Supreme Court Task Force on Family Courts and is involved in several projects to benefit the Indiana legal system. She also chaired the Supreme Court task force for the development of Trial Court Local Rules, has also served as a member of the Indiana Board of Law Examiners, the Governance Committee of the Supreme Court IOLTA (Interest on Lawyer Trust Account) Committee; the Federal Advisory Committee on Local Rules for the Federal Court for the Northern District of Indiana; and the Federal Advisory Committee for the Expediting of Federal Litigation.

Judge Robb authored "Reflections of Baseball, Life and the Law" in the Indiana State Bar Association's journal, *Res Gestae* and "Running Bases, Winning Cases: Why the Grand Old Game of Baseball is like the legal

profession" in the ABA's journal. She also authored a chapter on Supreme Court Justice Leonard Hackney in, *Indiana Supreme Court Justices*, and co-authored a chapter, "From Juvenile Courts to Family Courts," in *Essays on Indiana Legal History*.

In addition, she serves on the ABA Committee that accredits law schools and Chaired the 2010 ABA's Appellate Judges Council-Appellate Judges Education Institute's national Summit for Judges, lawyers and Staff attorneys. Chief Judge Robb is an elected member of the American Law Institute (ALI).

Judge Robb was retained on the Court of Appeals in 2000 and 2010, is married to a professor at Purdue University. Their son, a graduate of the United States Naval Academy, is a Lieutenant on active duty in the United States Navy.

### Judge Barnes, cont.

port enforcement from the U.S. Department of Health and Human Services, and in 1995 received the State Director's Award for Outstanding Child Support Program from the Indiana Family & Social Services Administration.

While Prosecutor, Judge Barnes was elected President of the National District Attorneys Association (1995-1996), Chairman of the Board, Indiana Prosecuting Attorneys Council (1982-1983, 1992-1993), President of the St. Joseph County Bar Association (1992-1993), National Board of Trial Advocacy (1995-1996), National Advisory Council on Violence Against Women (1997), Chairman of the Board of Regents, National College of District Attorneys (1997-1998), American Prosecutor's Research Institute (1997-1998), and various other professional and civic organizations.

The Indiana Victim Assistance Network honored him with its Special Advocate Award in 1989, and in 1998 he received the Eugene "Shine" Feller Award from the Indiana Prosecuting Attorneys Council.

Judge Barnes supports a wide range of community organizations, especially those that serve vulnerable populations. He is a longtime supporter of the LOGAN Center's annual Nose-On campaign and in 1986 received its Joseph J. Newman

Award for Committed and Outstanding Advocacy on Behalf of Developmentally Disabled Individuals.

He also has served on the boards of the St. Joseph County Chapter of the American Cancer Society and the Alcoholism Council of St. Joseph County.

Judge Barnes is a member of the Indiana Bar Foundation, the St. Joseph County Bar Association, the Indiana State Bar Association, and the Illinois State Bar Association.

Judge Barnes is married to Alberta Barnes, a retired educator. They are the parents of two sons, Tim and John. Tim is an attorney in Washington, D.C. John is a producer for MLB Network (Major League Baseball). John and his wife, Bess, are the parents of the world's most perfect granddaughter, Addison Emily.

He lives in South Bend and is an avid baseball fan and reader.

### Judge Riley, cont.

al legal experience. In 2008, she co-founded the Legal Aid Centre of Eldoret, Kenya (LACE), which provides legal access to justice in the AMPATH medical center for its HIV/AIDS patients.

In 2011, Judge Riley traveled with the Washington, D.C.-based International Judicial Academy to The Hague, Netherlands, to observe the International Criminal Court and two International Criminal Tribunals that are hearing cases from Sierra Leone and the former Yugoslavia.

In 2012 she participated in the 3rd Sino-U.S. Law Conference at the National Judges College of the People's Republic of China, which oversees all aspects of that country's judicial training, placement and promotion.

She also has lectured on judicial ethics at the Justice Academy of Turkey, in 2013.

Judge Riley is the mother of two sons. She was retained on the Court by election in 1996 and 2006 and later served as presiding judge of the court's Fourth District.



## COURT OF APPEALS OF INDIANA

### ORAL ARGUMENT AT A GLANCE

WOMEN'S BENCH BAR RETREAT, CULVER

## *Gilbert v. Gilbert*

### CIVIL LAW ISSUES:

- Whether the trial court abused its discretion in granting Appellee's relocation request.
- Whether the trial court correctly found that Appellant failed to prove that relocation was not in the children's best interests.
- Whether Appellee is entitled to attorney fees.

### ORAL ARGUMENT:

Friday, Feb. 28, 2014  
Noon

### APPEAL FROM:

Noble Superior Court  
The Honorable  
Robert E. Kirsch, Judge

## Synopsis: *Case No. 57A03-1308-DR-312*

Father and Mother were married for 10 1/2 years, during which time they had two children. At the time Father and Mother divorced, they entered into an agreement governing the custody and parenting time arrangements of the children, which was incorporated into the trial court's decree of dissolution. Although Father and Mother shared joint legal custody, Mother had primary physical custody of the children. Father, who lived only three miles from Mother's house, exercised specified parenting time and was able to spend additional time with the children through involvement in their schooling and activities.

Approximately eight months after the divorce was finalized, Mother filed a notice with the trial court of

her intent to relocate from Albion to Goshen, IN. In response, Father objected to the relocation and filed a motion for modification of custody, parenting time, and child support. Following a hearing, the trial court approved Mother's proposed relocation and determined that the original custody and parenting time orders were to remain in force.

Father appeals, arguing that the trial court abused its discretion in granting Mother's request to relocate with the children. According to Father, Mother failed to satisfy her burden of proof under IC 31-17-2.2-5(c) that the proposed relocation is made in good faith and for legitimate reasons, because she cited only the need for a larger home to accommodate her expanding family and better school districts as her bases for relocating.

Father relies on *T.L. v. J.L.*, 950 N.E.2d 779 (Ind. Ct. App. 2011), *reh'g denied*, where this court noted that a closer proximity to family, increased family support, a reduced financial burden, and career and educational opportunities were legitimate reasons for relocating. In contrast, Father contends that the children have no family in Goshen, that Mother will have a longer commute to work, that parenting time will be inconvenienced by travel, and that there is no evidence that the children will receive a higher quality of education in their new school.

Father also challenges the trial court's finding that Father failed to prove that the relocation would not be in the children's best interests in

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Court Tidbits

- Six of the Court of Appeals’ first 19 judges served in the Civil War, all as Union soldiers or officers. Judge Posey Kime, born 1896, was the first to serve in WW1.
- Nine Court of Appeals judges have later served the Indiana Supreme Court, including current Justice Robert D. Rucker.
- Judge Frank M. Powers served just 33 days. The longest serving judge by far is Patrick D. Sullivan Jr., at more than 16,000 days. He retired in 2007 but still serves as a senior judge.
- One of the five original members of the court, Jeptha New, died from a self-inflicted pistol shot in 1892. His term of office was completed by his son, Willard New.
- Another father-son pair also served on the court: Ralph N. Smith and son Russell W. Smith. An uncle-nephew pair also served: Edgar D. Crumpacker and nephew Harry L. Crumpacker.
- Memorably named judges include Henry Clay Fox, Daniel Webster Comstock, Cassius Clay Hadley and Ira Batman.
- Judge John C. McNutt’s son, Paul McNutt, was Indiana governor from 1933-37 and appointed two judges to the Court of Appeals.
- One foreign-born judge attained the court: George L. Reinhard was born in Bavaria in 1843, served in the Civil War and wrote “The Common Sense Lawyer.”
- Judge Thomas Faulconer made Indiana history when, as a Marion County judge, he opened his courtroom doors to TV and newspaper cameras for a celebrated murder trial in 1959.
- Judge Joseph H. Shea resigned his Appeals Court seat in 1916 to become President Woodrow Wilson’s ambassador to Chile.

Case synopsis, cont.

accordance with IC 31-17-2.2-5(d). In addition to arguing that the children’s community and family ties to Albion would be severed, Father claims the trial court should have either appointed a *guardian ad litem* or interviewed the children to weigh their wishes as a factor in determining their best interests. Mother, however, contends that her reasons for the relocation were legitimate and in good faith, and that the relocation is in the best interests of the children. Mother argues that she was unable to find a residence that

suited her needs in Albion, and the move to Goshen allows Mother’s fiancé to be nearer to his work and child. In addition, Father works in Goshen, and the children will attend the same school as Father’s child from a previous marriage. On cross-appeal, Mother claims that she is entitled to appellate attorney fees because Father’s appeal is frivolous and in bad faith. Mother argues that she sold her home in Albion, and because Father did not seek custody of the children, his “appeal is an academic exercise only.” (Appellee’s Brief pg. 14).

Attorneys for the Parties

For the Appellant

**Gregory A. Eberhard** grew up in the small town of Harrisburg, AR, but moved to Angola, IN to join the firm of Eberhard & Weimer in 2013. Mr. Eberhard graduated from Arkansas State University in Jonesboro with a B.A. in Political Science in 2010. He attended The University of Tulsa College of Law in Tulsa, OK, where he received his Juris Doctorate as well as a Certificate in Native American Law from the Native American Law Center in 2013. While in law school he was chosen to be on the elite University of Tulsa AAJ Trial Team. Mr. Eberhard took the Indiana State Bar Exam in July of 2013 and was admitted to practice law in the State of Indiana and the U.S. District Courts for Northern and Southern Indiana in October 2013. He is a Mason and member of Poinsett Lodge #184 in Harrisburg, AR and Tulsa Lodge #71 in Tulsa, OK. Mr. Eberhard is also an avid target shooter and enjoys spending time at the range with his wife, Roberta.

**Bill D. Eberhard Jr.** graduated valedictorian from the Prairie Heights (LaGrange, IN) Community School Corp. in 1972. He graduated *magna cum laude* from Indiana State University in 1976 with a degree in business administration. Mr. Eberhard obtained his Juris Doctorate from Indiana University School of Law in 1979, also *magna cum laude*. He procured his MBA with Indiana Wesleyan in 1990, graduating at the top of his class. His practice includes litigation, municipal government, schools, insurance defense, and mediation. Mr. Eberhard is licensed to practice in Indiana and Michigan and in the Northern and Southern District federal courts of Indiana. He is listed in the Indiana Registry of Approved Civil Mediators.

For the Appellee

**Lindsey A. Grossnickle** grew up in Grand Ledge, MI. She graduated from Alma College (MI) in 1997 with a double major in English and Political Science, and earned her law degree from Valparaiso University School of Law in 2000. From 2000-2002, she clerked for the Honorable Patricia A. Riley, Court of Appeals of Indiana. Since September 2002, Ms. Grossnickle has worked in Columbia City at the firm of Bloom Gates & Whiteleather, LLP, where she has been partner since 2009. She primarily practices family law and is a registered Family Mediator. Ms. Grossnickle regularly does appellate work and has argued before the Indiana Supreme Court. She has also been a Whitley County Deputy Prosecutor since 2004. Ms. Grossnickle is married to Andrew Grossnickle, an attorney and partner at Green Cates & Grossnickle in Syracuse, IN. They have a 3-year-old daughter, Norah.

Today’s Panel of Judges

The Honorable  
Margret G. Robb  
(Tippecanoe County)

**Margret G. Robb** was appointed to the Court of Appeals of Indiana in July 1998 by Governor Frank O’Bannon. She holds a B.S. and an M.S. in Business Economics from Purdue University, a Magna Cum Laude J.D. from Indiana University Robert H. McKinney School of Law and is a graduate of the Graduate Program for Indiana Judges. In 2011 she began a three year term as **Chief Judge**; the first woman to hold that position in the Court’s more than 100 year history. Prior to her appointment to the Court, Judge Robb was, for 20 years, engaged in the general practice of law in Lafayette, and served as a Chapter 11, 12 and a standing Chapter 7 Bankruptcy trustee for the Northern District of Indiana. She was a registered family and civil mediator and served as a Tippecanoe County Deputy Public Defender. She has been an officer of the Indiana State Bar Association, the Fellows of the Indiana State Bar Foundation, Tippecanoe County Bar Association, National Association of Women Judges, the Indiana University School of Law- Indianapolis Alumni Association and the Bankruptcy Section of the Indiana State Bar Association. She has also been a Board member of the Appellate Judges Council of the American Bar Association, the Indianapolis Bar Association, the Indianapolis Bar Foundation, the Senior Council Section of the Indianapolis Bar Association, the Appellate Practice Section of the Indiana State Bar Association and the Appellate Judges Education Institute. She was the moderator for the 2005-2006 and Chair for the 2006-2007 Indianapolis Bar Association’s Bar Leader Series, and is a member of the American Bar Foundation, American Judicature Society, a Master Fellow of the Indiana State Bar

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The Honorable  
Patricia A. Riley  
(Jasper County)

**Patricia A. Riley** was named to the Court of Appeals of Indiana by Governor Evan Bayh in January of 1994. A native of Rensselaer, Indiana, Judge Riley earned her bachelor’s degree from Indiana University-Bloomington in 1971 and her law degree from the Indiana University School of Law-Indianapolis in 1974. Early in her career she served as a Deputy Prosecutor in Marion County and a public defender in Marion and Jasper counties before entering into private practice in Jasper County. She served as a judge of the Jasper Superior Court from 1990 to 1993. She is a former associate professor at St. Joseph’s College in Rensselaer and currently an adjunct professor at the Indiana University School of Law -Indianapolis. Judge Riley’s legal memberships include the Indianapolis Bar Association, the Marion County Bar Association, and the Indiana State Bar Association, including co-chair of the ISBA’s Racial Diversity in the Profession Section; member, Women in the Law Committee; and member, Committee on Improvements in the Judicial System. Judge Riley is the former chair of the Appellate Practice Section of the American Bar Association, and a member of the ABA’s Judicial Division International Courts Committee. She is a member of the Indiana Judges Association and the Board of Directors of the National Association of Women Judges. Judge Riley’s civic associations include being on the Board of Directors of the Greater Indianapolis Health Foundation, Board of Directors of Global Peace Initiatives, Board of Directors and Treasurer of the Indiana University School of Law – Indianapolis Alumni Association, and a member of the Indianapolis Rotary Club. She also has extensive international

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The Honorable  
Michael P. Barnes  
(St. Joseph County)

**Michael P. Barnes** was appointed to the Court of Appeals of Indiana in May 2000 after long service as the St. Joseph County Prosecuting Attorney. He was retained on the Court by election in 2002 and 2012 and served as Presiding Judge of the 3rd District from 2009 through 2011. In 2012 he wrote 144 majority opinions for the Court of Appeals. Judge Barnes was born and raised in rural Illinois. He earned a B.A. in History at St. Ambrose College in Davenport, IA in 1970 and received his J.D. in 1973 from the University of Notre Dame Law School. He practiced law from 1973-78 at the South Bend law firm of Voor, Jackson, McMichael and Allen, while also serving as Deputy Prosecuting Attorney. Voters chose him in 1978 to be the St. Joseph County Prosecuting Attorney, an office he held for 20 years over five elections. While prosecutor, he oversaw a staff of 65 and spearheaded development of the CASIE Center for child victims of physical and/or sexual abuse, which continues to serve the community. Judge Barnes also created a domestic and family violence unit in the Prosecutor’s office and launched a pretrial diversion program for nonviolent misdemeanor offenders that served as a model for successful state legislation. The domestic and family violence unit focused solely on crimes against women and children, including abuse and neglect. Judge Barnes personally tried more than 25 murder and other major felony cases while overseeing a staff of 12 to 15 deputy prosecutors. His efforts to collect delinquent child support payments garnered more than \$100 million for children in St. Joseph County. For those efforts, he received the Regional Director’s Citation in 1989 and 1998 for innovative and effective child sup-

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